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easier for its own litigants. *Premo Specialty Mfg. Co. v. Jersey-Creme Co.*, 200 Fed. 352 (9th Circ.); *Colorado Iron-Works v. Sierra Grande Mining Co.*, 15 Colo. 499, 25 Pac. 325; *Fond du Lac Cheese & Butter Co. v. Henningsen Produce Co.*, 141 Wis. 70, 123 N. W. 640.

FOREIGN EXCHANGE — SALE OF DRAFT — MEASURE OF DAMAGES ON DISHONOR. — The plaintiff paid the defendant \$92,500 for a draft for 2,000,000 *lire* on the defendant's Genoese correspondent. Thereafter the Bank Commissioner took possession of the defendant's business and ordered the Genoese bank not to pay; these instructions were followed when the draft was later presented. The plaintiff sues to recover the original sum paid. *Held*, that the plaintiff recover only the rate of exchange for 2,000,000 *lire* at the date of dishonor. *American Express Co. v. Cosmopolitan Trust Co.*, 132 N. E. 26 (Mass.).

To recover the original deposit the plaintiff must prove either the right to rescind the contract for failure of consideration or the existence of a trust. There cannot be a trust without a *res*. Where actual money is transferred abroad, there is a *res*. *People ex rel. Zotti v. Flynn*, 135 App. Div. 276, 120 N. Y. Supp. 511. But, in the case of cable transfers and drafts, because of the lack of a *res*, the existence of any trust is generally denied. *Legniti v. Mechanics and Metals Bank*, 230 N. Y. 415, 130 N. E. 597. See *Strohmeyer and Arpe v. Guaranty Trust Co.*, 172 App. Div. 16, 157 N. Y. Supp. 955; Zechariah Chafee, Jr., "Progress of the Law — Bills and Notes," 33 HARV. L. REV. 255, 279; Austin W. Scott, "Progress of the Law — Trusts," 33 HARV. L. REV. 688, 689. Therefore the plaintiff advances the theory of rescission because of failure of consideration. See 3 WILLISTON, CONTRACTS, §§ 1375, 1457, 1467. Obviously had this been a simple executory contract by the defendant to furnish *lire* in Genoa, the plaintiff might have rescinded for the defendant's failure to perform. But there is more than a simple contract. The draft is the thing bought, the consideration. Merchants customarily regard the draft as a tangible thing; and, in effect, the transfer of the draft has merged the executory contract. If the draft is dishonored, the plaintiff must sue in damages for the breach of the obligation attached by law to the draft. See Byles, J., in *Suse v. Pompe*, 8 C. B. (N. S.), 538, 565.

HOMESTEAD — PROTECTION OF WIFE'S INTEREST — VALIDITY OF HUSBAND'S CONTRACT TO CONVEY HOMESTEAD. — A statute provides that a deed conveying homestead property shall be valid only if signed by both husband and wife. (C. & M. ARK. DIGEST, § 5542.) The defendant, without the assent of his wife, contracted to sell the plaintiff his homestead. On the wife's refusal to join in the conveyance, the plaintiff sues for damages. *Held*, that the plaintiff do not recover. *Ferrell v. Wood*, 232 S. W. 577 (Ark.).

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 78.

HOMICIDE — SELF-DEFENSE — DUTY TO RETREAT FROM PLACE OF BUSINESS. — The defendant, while about his business of superintending certain excavations, was attacked by the deceased and killed him. The court instructed the jury that if retreat is reasonably safe one must retreat rather than kill. *Held*, that these instructions were erroneous. *Brown v. United States*, U. S. Sup. Ct., Oct. Term, 1920, no. 103.

It is possible that this decision stands for the proposition that there is, in general, no duty to retreat, a proposition difficult to maintain. See Joseph H. Beale, "Retreat from a Murderous Assault," 16 HARV. L. REV. 567. More narrowly construed, the decision may be regarded as extending to include a place of business the doctrine that one need not retreat from his dwelling-